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No. 97-358

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

GEORGE K. PRICE and HARRY L. SCHUMAN,

Petitioners,

v.

FCC NATIONAL BANK,

Respondent.

Petition for Writ of Certiorari
To The Illinois Appellate Court

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

FCC's assertion that preemption is not an issue (Br. Opp. 3-6), is fallacious. The Illinois Appellate Court squarely construed TILA as barring common law claims for breach of contract and fraud. The Appellate Court first noted that FCC "urges us to uphold the . . . dismissal of plaintiffs' [entire] action on the basis that the federal court has determined that [FCC] has complied with the [TILA] and, according to [FCC], compliance with the [TILA] is complete compliance with Illinois law." (Pet. App. 4-5; 673 N.E.2d at 1068) After finding that "compliance with the federal Truth in Lending Act is . . . compliance with the Illinois Credit Card Issuance Act (Pet. App. 6; 673 N.E.2d at 1070), the Appellate Court also found that: ". . . because defendant has complied with the federal Truth in Lending Act, plaintiffs cannot state a claim for either common law fraud or breach of contract. . . . [B]ecause defendant complies with the federal law, it could not have breached its contract with plaintiffs." (Pet. App. 7; 673 N.E.2d at 1070-71)

Except for application of federal preemption, there is absolutely no basis for the Appellate Court's conclusion that the common law claims are barred. Like a rose, "preemption" is preemption whether or not that word is found in the opinion below.

The Appellate Court clearly interpreted a federal statute, TILA, to bar the prosecution of state common law claims and this Court, it is respectfully submitted, has jurisdiction to review that erroneous decision and, for the reasons stated in the Petition, reverse it.[1]

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[1] On another issue, FCC also asserts erroneously and without any basis in the record that for 26 years the Federal Reserve Board (the "Board") has approved its deceptive practice of advising cardholders that they have a 20 day grace period when they actually have 25. (Br. Opp. 12-

Respectfully submitted,

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14). FCC relies on a Board staff interpretive letter dated May 10, 1971. *Id.* However, the content of that letter was neither reviewed nor approved by the Board itself. Moreover, in 1982, the Board explicitly repealed all staff interpretations, including the 1971 letter upon which FCC relies. Amendments to Regulation Z, 46 Fed.Reg. 20, 892 (1981).